

Set of Findings and Recommendations on an Application Submitted by Monroe County, Florida, Florida Department of Transportation, and Florida Department of Community Affairs for Incidental Take of the Key deer, Lower Keys marsh rabbit, and eastern indigo snake in Monroe County, Florida

I. Description of Proposal

Monroe County (County), Florida Department of Transportation (FDOT), and Florida Department of Community Affairs (Applicants) are seeking an incidental take permit (ITP) from the United States Fish and Wildlife Service (Service) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*). The ITP, if issued, would have a term of 17 years and authorize take of the Florida Key deer (*Odocoileus virginianus clavium*), Lower Keys marsh rabbit (*Sylvilagus palustris hefneri*), and eastern indigo snake (*Drymarchon corais couperi*) incidental to the commercial and residential development and transportation improvements on Big Pine (24.68°N, 81.36°W) and No Name (24.70°N, 81.33°W) Keys, Monroe County, Florida. The Project area encompasses 7,031 acres; 5,840 acres on Big Pine Key and 1,191 acres in No Name Key. This Project anticipates impacts of approximately 168 acres (2.4 percent) of the Project area.

The Applicants propose to manage these developments and improvements under a Habitat Conservation Plan (HCP) that has been submitted as part of their permit application. The HCP proposes measures designed to avoid, minimize, and mitigate impacts from any expected incidental take of the Key deer, Lower Keys marsh rabbit, and eastern indigo snake.

II. SECTION 10(a)(2)(A) HCP CRITERIA - ANALYSIS AND FINDINGS

1. The impact to result from such taking.

The HCP addresses the incidental take of Key deer, Lower Keys marsh rabbit, and eastern indigo snake that may result from development and improvement activities on Big Pine Key and No Name Key over the next 17 years. The types of activities covered under this HCP include residential development, commercial development and expansion, community and institutional facilities, and transportation improvements.

The Applicants anticipate the following development activities will occur in the Project area during the permit period and within a total impact value of "H" equal to 1.1 (see HCP for detailed explanation of H valuation):

- A maximum of 200 new residential units will be built.
- Limited non-residential development as well as expansion or redevelopment of commercial facilities and community organizations such as religious institutions and civic clubs are

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authorized. The Applicants anticipate that no more than 60,000 square feet of floor area will be added over the permit period.

- The development will include recreational and community center facilities, passive public parks and neighborhood “pocket” parks, as well as the expansion of the existing public library.
- Several public facilities are anticipated over the permit period, such as a sewage treatment plant, public office space, and the expansion of the existing emergency response facility. The Applicants anticipate that no more than 24,000 square feet of floor area will be allocated to recreational and community facilities and other public facilities.
- During the permit period, some local dirt roads may be paved, and some paved roads may be widened to accommodate a bike path.
- The FDOT will complete the addition of a third lane on the developed segment of U.S. 1 on Big Pine Key. This involves the extension of the newly constructed turn lane east and west of the intersection improvement project.

Impact to Key deer: Clearing of existing vegetation will occur as a result of this construction reducing the amount of habitat available and further fragmenting undeveloped habitat. The occupants of newly developed areas will increase the number of vehicles and free-roaming pets (dogs) that may increase the risk of mortality in the Key deer.

Impact to Lower Keys marsh rabbit: Clearing and construction activities may result in temporary avoidance of these areas by the Lower Keys marsh rabbit. Development will likely increase the number of vehicles and free-roaming cats that may increase the risk of mortality in Lower Keys marsh rabbits.

Impact to eastern indigo snake: The proposed action could result in the loss of 168 acres of habitat; most of which is fragmented and degraded. The Service anticipates mortality from traffic and free-roaming pets would likely be negligible. Implementation of the standard protection measures should minimize impacts the eastern indigo snake during the development activities. The HCP requests coverage under the ITP for this species in the remote case of take during construction activities associated with the permitted development.

2. The steps taken to minimize and mitigate such impacts and the funding that will be available to implement such steps.

The HCP provides the following avoidance, minimization, and mitigation measures. All lands within the Project area have been classified in a three-tier system based on habitat quality with Tier I areas designated for conservation, restoration and protection of environmentally sensitive land; Tier II areas designated to prevent encroachment on environmentally sensitive land and reduce sprawl; and Tier III areas designated for redevelopment and infill new development. New development will be concentrated in disturbed areas in order to minimize the loss of prime habitat for the covered species, and reduce free-roaming pet mortality. New commercial development will be limited to infill areas mainly along the existing commercial corridor on

U.S.1. The Applicants estimate that no more than seven acres of native vegetation will be cleared over the duration of the permit. Wetland impacts, estimated at no more than 3 acres, will be limited to roadside swales and ditches where the U.S. Army Corps of Engineers (Corps) has not exerted Federal jurisdiction.

A limited number of fences and other accessory uses will be permitted; however, new fences constructed in Tier I habitat will require approval by the Service. Lower Keys marsh rabbit habitat will be avoided, where possible, and impacts limited to previously developed areas. The County will ensure that standard protection measures for the eastern indigo snake are implemented during all construction activities to minimize the risk of take. Monroe County will provide the funding required to implement the avoidance, minimization, and mitigation measures proposed by the Applicants. For each H-value unit-of development, three H-value units of conservation lands will be acquired, restored, and protected in perpetuity. Over the period of the permit, lands with an H value of 3.3 will be acquired. At no time will development exceed acquisition by more than 5 percent. These lands will be restored and maintained in a natural condition under County, State, and Federal supervision. See HCP, page 57, for complete list of minimization and mitigation measures.

3. Alternative actions to the take that were considered by the Applicants and reasons why such alternatives are not being utilized.

A no-action alternative was considered that identified no improvements to the level of service on U.S. 1 and maintained the current existing building moratorium (see HCP, page 50). Under the no-action alternative, no area-wide HCP would be proposed and private landowners would have little or no recourse to obtain development approval. According to the Applicants, this alternative would have resulted in great financial burden for landowners in the Project area. With no area-wide HCP, many individual projects would require individual incidental take permits resulting in a piecemeal approach to mitigation and extreme delays in the permitting process. The Applicants rejected this alternative as impractical.

A reduced-take alternative was also considered. The level of impact would have been reduced, but important community needs, such as public health and recreational facilities, would remain unsatisfied, and many private landowners would have lost the ability to develop their properties. The Applicants rejected this alternative as impractical.

4. Other measures the Secretary may require as being necessary or appropriate for the purposes of the HCP.

The Service finds that no other measures are required in the HCP to implement its intent and purpose. In response to public comment, however, the Service asked the Applicants to add information to the HCP. This is described in the following section.

III. PUBLIC COMMENT - ANALYSIS AND FINDINGS

The Service prepared an Environmental Assessment (EA) for this ITP request. A notice of availability was published in the *Federal Register* on May 23, 2005, notifying the public of the availability of the HCP and EA for review and comments through July 22, 2005. The Service received nine requests for documents and received ten comments on this ITP application during the comment period.

Comment 1: Five commentors stated that several terms in the HCP needed to be defined and were concerned that this oversight could create problems with HCP implementation. They were also concerned that the terms, as used in the HCP, would be construed differently from the manner in which the terms are defined in the Monroe County's 2004 Master Plan for Future Development of Big Pine Key and No Name Key (Master Plan). They recommended that the terms be defined in the HCP and that the Master Plan be incorporated into the HCP.

Response 1: The Service agrees that the HCP would benefit from the inclusion of specific definitions and, therefore, requested the Applicants define the following terms in the HCP: new development, accessory uses and structures, replacement structures and fences, U.S. 1 corridor, and disturbed or scarified lands. The Applicants have provided definitions for these terms from the County's Land Development Regulations and Master Plan. The definitions can be found in Appendix A of the HCP. In addition, the Applicant has added a figure of the U.S. 1 corridor as an appendix to the HCP.

The HCP neither incorporates nor codifies the Master Plan, and it was never intended that it would. We disagree with the commentors' recommendation that such is necessary. Some commentors apparently consider the Livable CommuniKeys Program a separate planning document. The Livable CommuniKeys Program was used by Monroe County to identify concerns and priorities to address as it developed its Master Plan. The Livable CommuniKeys Program was a planning process, not a planning document. The Master Plan, on the other hand, is a policy statement by Monroe County of how it wants to handle development in the future. Although the Master Plan and the HCP address many of the same issues, they are two separate documents with different purposes and legal authorities. Notwithstanding the Master Plan and any subsequent revisions of the Plan, all developments in the Project area must comply with the HCP and any incidental take permit issued in this matter. The provisions of the HCP and any permit issued in this matter will be dispositive of whether the Applicant's actions are permissible.

Comment 2: Two commentors recommended that the Cross-Island Connector Road be restricted by the HCP.

Response 2: The Cross-Island Connector Road is not included with the covered activities in the HCP, and, therefore, will not be covered by any incidental take permit issued in response to the current application. This new road may require separate incidental take authorization if proposed in the future. If the project is federally funded or permitted, a separate review in accordance with section 7 of the Act will be undertaken by the Federal action agency and the Service. If the project is locally funded then a separate review would be conducted, and an HCP might be

needed.

Comment 3: Two commentors stated that the amount of development impact identified in the HCP is too great and that the mitigation proposed to offset the impacts is inadequate.

Response 3: The Applicants and the Service engaged in much discussion during the preparation phase of the HCP. Upon receipt of the Applicants' application and HCP, the Service carefully and critically considered the HCP, which included a detailed assessment of the direct, indirect, and cumulative effects of the proposed activities. We believe that the HCP is consistent with Federal, State, and local laws and policies. As determined in this set of findings, the Service believes that the proposed mitigation, at a 3 to 1 ratio, will be sufficient to mitigate for impacts to the covered species.

Comment 4: Two commentors expressed concern over development of a park in the Sands subdivision and asserted that the protective language in previous versions of the HCP has been removed from the HCP.

Response 4: In a separate action, the Corps, in consultation with the Service under section 7 of the ESA, reviewed the proposed development of the Big Pine Key Mariner Sports Complex project (the park in the Sands subdivision). Although the Sports Complex project and other Federal projects were assessed independently of this HCP, the cumulative effects of these other actions were considered in the Biological Opinion related to this HCP.

Incidental take associated with the development of the park in the Sands subdivision as well as the direct, indirect, and cumulative effects, also were addressed in the Service's Biological Opinion of June 21, 2004, and subsequent August 12, 2004 and January 12, 2006 amendments to the Biological Opinion. All remaining undeveloped lands in the area outside of the U.S. 1 corridor are designated as Tier I habitat. As such, no new development is expected, and development of the park is not expected to result in take of listed species above that which has already been identified.

Comment 5: One commentor recommended that there be an accelerated release of building permits due to the delay in implementation of the HCP.

Response 5: The County's Rate of Growth Ordinance (ROGO) controls the number of permits released per year in the Lower Keys including the HCP area. The ROGO is still a factor in the implementation of the HCP. The ROGO, the HCP, and other factors will be determinative of whether there can be an accelerated release of permits. The HCP states that "New residential and commercial development will occur progressively over 20 years, thus minimizing the extent of construction impacts that occur at any given time." In addition mitigation "H" must be within 5 percent of impact "H," such that development cannot be far ahead of the purchase of mitigation lands.

Comment 6: One commentor recommended that landowners who applied for building permits

prior to implementation of the tier system be held to the requirements that were in place at the time they applied for permits (grandfathered), and that permits should be issued first to those who applied before tier system implementation.

Response 6: The Applicants did not propose grandfathering development conditions at the time of permit application so this issue was not considered in the Service's evaluation of the HCP. Options for handling the pending permits are to be determined by the County, as long as such options are consistent with the provisions of the HCP and the conditions of any ITP issued in this matter.

Comment 7: One commentor expressed concern that the County Commissioners could modify the tier system after ITP issuance and that such modifications could have an adverse effect on the HCP. The commentor also inquired why the tier system in the Master Plan identifies tiers for all lots, but the HCP only identifies tiers for vacant lots.

Response 7: The Service requested that the Applicants provide an explanation of the tier system described in the HCP. The Applicants replied that the Master Plan for Big Pine Key and No Name Key contains the same three tier system as the HCP. Although the Board of County Commissioners deleted Tier II from the tier system for the remainder of the unincorporated Florida Keys, the three-tier system continued to apply to Big Pine Key and No Name Key. The three-tier system is used to encourage development in low-value habitat and protect high-value habitat. Thus, the HCP focuses on undeveloped properties. Changes to developed lots will result in impacts that are quantified by the H-value calculations. Any modifications to the three-tier system within the HCP area would require Service review, and possibly ITP amendment, if appropriate.

Comment 8: One commentor expressed concern about the removal of limits (caps) on nonresidential development from the final version of the HCP. This commentor recommended that the HCP incorporate the allowable proportions and caps on nonresidential versus residential construction found in the Master Plan.

Response 8: All development, whether residential or not, is subject to the HCP, and will be assigned an H-value based on its anticipated impact. There is no specific reason for incorporating the ratios of residential versus nonresidential development provided in the Master Plan in the HCP. The limit on all development is reached once the cumulative total of H equals 1.1. If the HCP incorporated the ratios and requirements of the Master Plan, the HCP would need to be amended whenever the local community chose to adjust its development policies. The Service is not aware of any conservation benefit to the covered species that might result from limiting Monroe County's flexibility in the balancing residential and non-residential development.

Comment 9: One commentor inquired why the provisions of the HCP regarding fencing are inconsistent with those of the Master Plan.

Response 9: The Applicants agreed to revise the HCP to make it consistent with the fencing rules in the Master Plan and to add an appendix to the HCP with a description of those rules. As noted in Response 1, above, discrepancies may exist between the HCP and the Master Plan, but whenever covered species are affected, the HCP and ITP will govern.

Comment 10: One commentor expressed concern that there was no animal control program in the HCP.

Response 10: The primary reason for an animal control program would be to reduce potential predation on the Lower Keys marsh rabbit. The Service believes that establishing a buffer zone between development and occupied marsh rabbit habitat will be effective in minimizing potential indirect effects of development. The County will implement a free-roaming pet education program. The County, the Service, and animal rights proponents continue to meet to prepare a plan for control of free-roaming cats on Big Pine Key and No Name Key. The plan will include regulatory mechanisms and monitoring to ensure that the HCP and Master Plan are working to control free-roaming pets. The Service will review domestic animal control annually and may require further animal control measures if population trends continue to decline. Any substantial decline in Lower Keys marsh rabbit abundance would constitute a changed circumstance that is already addressed in the HCP.

Comment 11: One commentor requested clarification of the reporting and computation of cumulative H. This commentor expressed concern that development impacts that have been authorized since March 13, 1995, must be counted against the cumulative H of 1.1. This commentor also suggested more frequent reporting of H-value of impacts, rather than just once a year in an annual report.

Response 11: The Service requested that the Applicants simplify the computation of impacts (H) and add an explanation of the public reporting procedure to the HCP. The Applicants have modified the HCP to simplify the computation procedure and provide example calculations for residential and non-residential development. The Applicants have provided an initial development credit accounting in a form acceptable to the Service for annual review.

The Service has also received an accounting from Monroe County of the authorized development impacts that have occurred to date since March 13, 1995. This cumulative H will be counted against the total H of 1.1. See our response to Comment 14 for discussion of reporting frequency.

Comment 12: One commentor indicated that there was a typographical error in the level of H allowed in Tier I.

Response 12: The Service concurs and requested that the Applicants modify the HCP to reflect the level of development in Tier I to be 0.022H rather than 0.22H. The Applicants made the revision to the HCP on page 57, number 5.

Comment 13: Four commentors were concerned with possible restrictions in the HCP on the replacement of existing structures such as houses, generator rooms, cisterns, and fences.

Response 13: The Applicants have included the legal definition of replacement structures in Appendix A, which has been added to the HCP. The HCP does not restrict the lawful replacement of these structures. The questions raised by these commentors centered on requirements established by the Master Plan, and not the HCP.

Comment 14. One commentor suggested that annual reporting was insufficient to keep the public apprised of the status of approaching the H-limit or to allow the public to contest the individual H calculations.

Response 14. The purpose of the annual reporting is to assist the Service in monitoring the implementation of the HCP. It is not intended to be the primary means in which the County will communicate with the public. We agree, however, that it would be desirable for the County to keep the public updated on a timely basis of its building actions. The Service does not believe that more frequent reporting will improve conservation efforts for covered species.

Comment 15. One commentor suggested that mitigation acquired before the ITP should not count toward offsetting impacts of the HCP.

Response 15. There is no requirement for the Applicants to wait until ITP issuance before acquiring mitigation lands. The Applicants have been developing their HCP over several years. Considering their resources and land availability in the Project area, it was in the Applicants' interest to begin land purchases for the conservation purposes of their HCP in anticipation of ITP issuance. This is more than just a theoretical interest. Impacts that would be covered by the HCP include developments authorized by Monroe County since March 15, 1995, when a court-ordered building moratorium took effect. The Applicants' actually need their previously acquired mitigation lands in order to meet the accumulated "demand" for mitigation as the backlog of previously-authorized development is constructed early in the term of any ITP issued in this matter. The Service believes that mitigation lands acquired by the Applicants within the Project area since March 15, 1995, are appropriate to offset these impacts.

IV. SECTION 10(A)(2)(B) PERMIT ISSUANCE CRITERIA - ANALYSIS AND FINDINGS

1. Criterion - The taking will be incidental.

Findings - The take will be incidental to the otherwise lawful activities, as proposed in the HCP, i.e., land clearing, residential and commercial development, and transportation improvements.

2. Criterion - The Applicants will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

Findings - The Applicants, in consultation with the Service, have developed an HCP that satisfies the ITP requirements provided in the Act and the Service's implementing regulations. The HCP provides for measures to minimize project impacts on site. Unavoidable impacts will be mitigated through the acquisition, restoration, and perpetual protection of conservation lands in the Project area. The Service believes that the Applicant's have proposed measures that will, to the maximum extent practicable, minimize and mitigate the impacts of the take to covered species for the following reasons:

- a) The total impact of all development activities over 20 years will not exceed $H = 1.1$.
- b) New residential development will be limited to a maximum of 200 dwelling units over 20 years.
- c) Clearing of native habitat will be limited to parcels to be developed for residential use or for local road widening. The total amount of clearing over 20 years will be limited to no more than 7 acres. No clearing of native habitat, other than that necessary and authorized for new residential development, local road widening, or fire breaks to protect residential areas will be allowed. All other development will occur on disturbed or scarified lands.
- d) New residential development in Tier 1 areas will be limited to no more than five percent of all residential units permitted over the ITP period (i.e., a maximum of ten units) or two percent of the total H, whichever results in a lower H.
- e) No new development other than single-family residential and accessory uses will be permitted in Tier 1 areas. The total H of all development in Tier 1 will not exceed two percent of the total H.
- f) No development will be permitted that might result in habitat loss on the Sands corridor.
- g) New residential and commercial development will occur progressively over the period of the ITP, thus minimizing the extent of construction impacts that occur at any given time.
- h) New commercial development will be limited to infill in existing commercial areas on Tier 2 and Tier 3 lands, mainly along the U.S. 1 corridor on Big Pine Key. All new commercial development would be limited to disturbed or scarified lands. Clearing of pinelands and/or hammock will not be permitted for commercial development activities.
- i) Expansion of private nonresidential facilities will be restricted primarily to within the U.S. 1 corridor.

- j) The modified County rate of growth ordinance (ROGO) will continue to give new development priority to Tier 3 lands over Tier 2 and Tier 1 lands.
- k) New recreational and community facilities development would be restricted to existing developed areas that are either already publicly owned or acquired for that purpose.
- l) Minor recreational and community facilities will be restricted to areas within existing improved subdivisions.
- m) Community organizations' development will be restricted to expansions, on existing organization-owned land, up to the buildable area limits per the County Code. No clearing of native habitat will be permitted for these expansions.
- n) Speed limits, traffic calming devices, and other measures will be implemented to lower the probability of vehicle collisions with Key deer and Lower Keys marsh rabbit on county roads.
- o) Public infrastructure development will be restricted to disturbed lands as defined in the County Code (9.5-4 [D-14][S-2]).
- p) No new fences will be allowed in Tier 1 lands unless they are authorized by the Service. The Service will review applications for fences in Tier 1 for impacts on covered species.
- q) No additional fences will be allowed in the U.S. 1 commercial corridor.
- r) Fences will be subject to restrictions and guidelines established in agreement with the Service.
- s) No development will be allowed in Lower Keys marsh rabbit habitat. No residential or commercial development will be allowed within 1,640 feet of marsh rabbit habitat, with the exception of isolated areas. Road widening activities along U.S. 1 would occur within existing cleared and filled portions of the FDOT right-of-way.
- t) FDOT will avoid impacts to wetlands during U.S. 1 widening.
- u) Accessory uses will be permitted on lots adjacent to existing developed lots only in Tier 2 and Tier 3 lands. Residential accessory uses would be limited to those listed in the Master Plan and County Code (Chapter 9.5-4[A-2]).
- v) The County will implement an animal control education program to educate the public regarding the potential negative effect of free-roaming pets on the Key deer and Lower Keys marsh rabbit. The education program will also request that the public report any Lower Keys marsh rabbit road mortality to the County or to the Service.
- w) The County and Service will annually review and evaluate the need and feasibility of additional regulatory measures to control the spread of free-

roaming cats. If deemed necessary and feasible, measures will be enacted by a date determined through mutual agreement of the Applicants and Service.

- x) The County will make sure that standard protection measures for the eastern indigo snake will be implemented during all construction activities to minimize impacts to the species.

3. Criterion - The Applicant will ensure that adequate funding for the HCP and procedures to deal with unforeseen circumstances will be provided.

Findings – Monroe County will fund land acquisition and management under this HCP through the Monroe County Land Authority (MCLA). Funding for the MCLA is by recurring revenue from a Florida Department of Natural Resources park surcharge and tourist impact tax revenue. Additional sources of revenue for the MCLA include grants from programs such as Preservation 2000. All revenue provided to the MCLA is deposited into an interest-bearing account for the purpose of land acquisition and program administration costs. The HCP lists procedures for dealing with unforeseen circumstances.

Adequate mitigation for proposed development will have to be provided prior to project initiation. The difference between mitigation and development credits can be no more than a 5 percent at any time. In addition, the Applicants have already acquired conservation lands for approximately 23 percent of the anticipated impact.

4. Criterion - The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

Findings - The legislative history of the Act establishes the intent of Congress that this issuance criterion is identical to a regulatory finding of “no jeopardy” under section 7(a)(2) [see 50 CFR 402.03]. As a result, issuance of this section 10(a)(1)(B) permit was reviewed by the Service under section 7 of the Act. In the Biological Opinion prepared for this action, the Service concluded that issuance of the incidental take permit is not likely to jeopardize the continued existence of the Key deer, Lower Keys marsh rabbit, and eastern indigo snake.

5. Criterion - Additional measures as required by the Director of the Service will be implemented.

Findings - The revised HCP incorporates all elements necessary for issuance of a section 10(a)(1)(B) permit. These elements are addressed elsewhere in this recommendation memorandum.

As discussed above in our response to comment 15, there is a backlog of previously-authorized construction that Monroe County anticipates will take three years to clear at the development rate authorized by ROGO. The County expressed concerns to the Service after the public comment period had closed, that this concentrated level of development early in any ITP term might exhaust their allowable "H" a few years ahead of the 20-year permit term requested in the HCP. The County requested that the term be shortened to 17 years to help avoid this situation. The Service will incorporate a 17-year term into any ITP issued in this matter.

6. Criterion - The Director of the Service has received the necessary assurances that the plan will be implemented.

Findings - The permit will only be effective when the mitigation measures have been carried out in accordance with the special conditions of the ITP. Failure to perform the obligation outlined by the conditions of the section 10(a)(1)(B) permit may be grounds for suspension or revocation of the ITP.

V. General Criteria and Disqualifying Factors - Analysis and Findings

The Service has no evidence that the ITP application should be denied on the basis of criteria and conditions set forth in 50 CFR 13.21(b)-(c).

VI. National Environmental Policy Act – Analysis and Findings

Issuance of the Permit will result in the authorization of take of Key deer, Lower Keys marsh rabbit, and eastern indigo snake associated with residential and commercial development and transportation improvements on Big Pine and No Name Keys in Monroe County, Florida. The issuance of the Permit would be predicated on the Service's expectation that there will be full implementation of the HCP and compliance with all requirements of the Permit. The Applicants have modified the HCP based on pre-application and post-public notice consultations with the Service and provided mitigation and minimization measures for incidental taking associated with residential and commercial development.

Our evaluation of the direct, indirect, and cumulative impacts in the environmental assessment prepared for this action indicates that Permit issuance would not have a significant effect on the human environment. The total effects that might result from Permit issuance would not cause permanent and irreversible changes in the current state of the physical and biological beach environment, infrastructure, societal issues, economics, aesthetics, or public health and safety, and, therefore, the sustainability of the human environment would not be affected. The incremental impact of the proposed action, when added to past, present, and reasonably foreseeable future actions, will not be significant to the human environment.

VII. Recommendations on Issuance of Permit and Finding of No Significant Impact

Based on our findings with respect to the ITP application, HCP, EA, and section 7 Biological Opinion, issuance of section 10(a)(1)(B) permit number TE083411-0 to Monroe County, Florida, Florida Department of Transportation, and Florida Department of Community Affairs, is recommended. Within the spirit and intent of the Council of Environmental Quality's regulations for the implementation of the National Environmental Policy Act of 1969 (as amended) and other statutes, orders, and policies that protect fish and wildlife resources, I have determined a finding of no significant impact for this project. I have also determined that this application meets the issuance criteria found in section 10(a)(2)(B) of the ESA.

Submittal:

Franklin J. Arnold III, Acting

Assistant Regional Director, ES

9 June, 2006
Date

Concurrence:

Cynthia K. Johnson

Deputy Regional Director

6/9/06
Date